

# PART 1228 - BONDS AND INSURANCE

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## **Subpart 1228.1 - Bonds and Other Financial Protections**

### **1228.106 Administration.**

#### **1228.106-1 Bonds and bond-related forms.**

(b) Standard Form (SF) 25, Performance Bond, prescribed at (FAR) 48 CFR 28.106-1(b), shall provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor. Forms other than the SF 25 (e.g., a commercial form) shall not be used by contractors when a performance bond is required.

#### **1228.106-6 Furnishing of information.**

(b) When furnishing surety information, the inquirer should also be informed that:

(1) Persons believing that they have legal remedies under the Miller Act (40 U.S.C. 3131-3134) are cautioned to consult their own legal advisor regarding the proper steps to take to obtain remedies.

(2) On construction contracts exceeding \$2,000, if the contracting officer is informed (through routine compliance checking, a complaint, or a request for information) that a laborer, mechanic, apprentice, trainee, watchman, or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with (FAR) 48 CFR subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. To insure proper payment to such employees, this investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3141), and Copeland (Anti-Kickback) Act (41 U.S.C. 51-58).

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106-6(b), the requirement for a copy of the contract may be satisfied by furnishing a machine-duplicate copy of the contractor's first pages which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement "Certified to be a true and correct copy" followed by his/her signature, title and name of the OA. The fee for furnishing the requested certified copies shall be determined in accordance with the DOT Freedom of Information Act regulation, 49 CFR part 7, (TAR) 48 CFR 1224.203).

## **1228.106-70 Execution and administration of bonds.**

(a) The contracting officer shall notify the surety within 30 days, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation must also appear on the bond.

(c) Performance or payment bond(s), other than an annual bond, shall not predate the contract to which it pertains.

(d) Bonds may be filed with the original contract to which they apply, or all bonds can be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

## **1228.106-71 Performance and payment bonds for certain contracts.**

### **1228.106-7100 Waiver.**

(a) Pursuant to the authority vested in the Secretary of Transportation by the Miller Act, the requirements of 40 U.S.C. 3131 *et seq.* are waived, to the extent authorized in 40 U.S.C. 3134(b), with respect to contracts for the construction, alteration, or repair of vessels when the contract is made under sections 1535 and 1536 of Title 31, the Merchant Marine Act 1936 (46 App. U.S.C. 1101 *et seq.*), or the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1735 *et seq.*), regardless of the terms of the contracts as to payment or title.

(b) The Miller Act's requirement that certain contracts have payment bonds in place in order to

protect the public, including the Government, material, men and laborers is not generally necessary with respect to the classes of contracts described under (TAR) 48 CFR 1228.106-7100(a). Inasmuch as the Government would directly or indirectly bear the burden of premiums for performance and payment bonds obtained in connection with such contracts, a substantial savings can be made by waiving the requirement that they be obtained. However, unusual circumstances may arise in which either payment or performance bonds, or both, will be advantageous in connection with certain such contracts.

### **1228.106-7101 Exception.**

A performance and payment bond for the contracts described under (TAR) 48 CFR 1228.106-7100(a) may be advantageous in view of unusual circumstances arising in connection with such contracts. Requests for the authority to include the requirement for either a performance or payment bond, or both in the contracts described under (TAR) 48 CFR 1228.106-7100(a) shall be submitted by the contracting officer to the HCA, before a solicitation is issued.

### **1228.106-470 Contract clause.**

The contracting officer must insert the clause at (TAR) 48 CFR 1252.228-73, Notification of Miller Act Payment Bond Protection, in solicitations and contracts when payment bonds are required.

## **Subpart 1228.3 - Insurance**

### **1228.306 Insurance under fixed-price contracts.**

#### **1228.306-70 Contracts for lease of aircraft.**

(a) The contracting officer shall insert the clauses at (TAR) 48 CFR 1252.228-70 through 1252.228-72, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228-70, Loss of or Damage to Leased Aircraft, in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed \$250 and the total rental cost for any single transaction is not in excess of \$2,500:

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) The contracting officer must insert the clause at (TAR) 48 CFR 1252.228-71, Fair Market Value of Aircraft, when fair market value of the aircraft can be determined.

(d) 49 U.S.C. provides that an aircraft lessor under a lease of 30 days or more is not liable for injury

or death of persons, or damage or loss of property unless the aircraft is in the actual possession or control of the lessor and the damage occurs because of the aircraft engine, propeller or the flight of, or an object falling from the aircraft, engine or propeller.

### **1228.307-1 Group insurance plans.**

(a) *Prior approval requirements.* The contracting officer shall instruct the contractor on a contract-by-contract basis on proposed purchases of group insurance plans. Legal advice should be sought where necessary on the advantages to the Government.

### **1228.311-1 Contract clause.**

The contracting officer shall insert the clause at (FAR) 48 CFR 52.228-7, Insurance Liability to Third Persons, as prescribed in FAR 28.311-1 unless it is waived by an official one level above the contracting officer.